



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

MEMORANDUM

**TO:** Barry E. Hill, Director, Office of Environmental Justice ("OEJ")  
Office of Enforcement and Compliance Assurance ("OECA")

**FROM:** Theodore J. Kim, Legal Counsel, OEJ/OECA /s/ *Ted Kim*

**DATE:** August 11, 2006

**RE:** "Environmental Justice in the News" for the Week Ending August 11,  
2006

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This memorandum summarizes select environmental justice news actions for the period beginning July 7, 2006 through the week ending August 11, 2006. The summary is limited to Lexis/Nexis searches conducted using the query: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/25 minorit! or low\*\*\*income) or (executive order 12898) or (civil right! w/25 environmental) or ("fair housing act" w/25 (environment! or zon!))." Please note that multiple articles covering the same topic were not included. Similarly, articles on international or foreign-based environmental justice issues were not included, unless they specifically pertained to the United States.

1. **News Items.**

The following news was particularly noteworthy:

- **"Sides Ramp Up Lobbying Efforts to Influence Climate Change Bill," Inside Cal/EPA (Aug. 11, 2004). See also "Democrats Retreat on Credit Trading in Climate Bill Amendments," Inside Cal/EPA (August 4, 2006).** According to the articles, various industry groups, environmentalists, and California officials have attempted to exert more influence on landmark greenhouse gas ("GHG") emission-reduction legislation, AB 32, in light of the fact that the legislative session is scheduled to close on August 31, 2006. AB 32 would implement GHG emission caps on several major industry sectors, require mandatory reporting of GHG emissions from these facilities, and establish phased-in reductions of GHG emissions. Democrats seek to amend AB 32 against the wishes of Governor Arnold Schwarzenegger's Administration. Specifically, the Democrats would like to deemphasize the potential for

emission reduction credit-trading schemes, while “Schwarzenegger Administration officials are hoping to pursue a flexible, long-term emissions credit-trading and offset strategy to reduce GHG emissions.” The Democrats believe that such emissions credit trading programs will harm environmental justice communities and will not necessarily lead to reductions. Similarly, environmental justice organizations submitted draft amendments “to protect their interests from higher criteria and toxic air pollutant emissions they fear may be a byproduct of industrial facility actions to reduce GHG emissions.” Like the Democrats, the environmental justice groups oppose credit-trading and seek to amend AB 32 in a manner that deemphasizes it. However, the Bill’s sponsors have rejected recent proposed amendments “that would have added as possible market-based strategies ‘trading, emission banking, emission credits, auction of emission credits and emission offsets.’” Nonetheless, it appears that “AB 32 will clear the Legislature and Schwarzenegger will sign it.”

- **“Groups Rip South Coast Plan Opening Credit Reserve to Power Projects,” Inside Cal/EPA (Aug. 11, 2006).** According to the article, environmentalists in California have criticized the South Coast’s Air District for its proposal “to open an emission reduction credit (“ERC”) ‘priority reserve’ to enable new power projects to be built.” The environmentalists assert that the proposal threatens communities and manipulates the ERC market. More importantly, the environmentalists state that the proposal “violates the purpose of district environmental justice principles.” In support, they argue that the draft environmental assessment that accompanies the proposed rule changes fails to clearly describe the projects that will use the ERCs, such that “stakeholders cannot decipher the exact environmental impacts of the rule changes.” According to one source, the “projects could be placed in environmental justice communities, and there has not been sufficient outreach in communities. When you view the rule changes in the abstract, you don’t get a sense of the impact on communities downwind.” In response, South Coast officials argue that “[e]nvironmental issues are addressed on a site-specific basis for each project as part of the permit and [California Environmental Quality Act] analysis.”
- **“Board Members Face Perchlorate Questions During Confirmation,” Inside Cal/EPA (Aug. 11, 2006).** According to the article, regional water board members in Santa Ana will face questions from California Senators regarding perchlorate cleanup activities in the Region during their appointment confirmation hearings later this month. Environmentalists remain particularly interested in these hearings and urged the lawmakers to “direct board members to advocate quicker, more thorough cleanups,” particularly in Rialto, California. While these environmental justice groups do not oppose the board members’ confirmations, they want to ensure that the new members will agree to strict cleanup commitments of

perchlorate, which has been linked to neurodevelopmental problems. (See related article on next page).

- **“Vietnamese Groups Groom Young Leaders,” Times-Picayune (Aug. 11, 2006) at 1.** According to the article, the National Alliance of Vietnamese American Service Agencies will cosponsor a conference to identify and foster young leaders within the Vietnamese community. Of particular note is a workshop that Jonathan Hook of Region VI of the United States Environmental Protection Agency (“EPA”) will sponsor on environmental justice. The environmental-related workshops, including one entitled “Justice for All: An Environmental Justice,” will be held on August 12, 2006.
- **“Mercury Bigger Risk for Poor, Minorities; Tend to Eat More Fish from Madison Lakes,” Capital Times (Madison, WI Aug. 9, 2006) at A3.** According to the article, “African-American, Latin, . . . and poor subsistence anglers could be particularly at risk [of high levels of mercury from lakes in Madison, Wisconsin], because they often depend on fish as a free food source and many consider fishing an important social and cultural activity.” Tests by the State’s Department of Natural Resources and the Mercury Policy Project have indicated that “levels of mercury in fish from Madison lakes are relatively high.” However, the article noted that most poor minority fishermen were unaware of such findings, as well as of advisories that the State issued, and eat more than one meal a week of fish that they catch in local lakes. Mercury has been linked to brain damage and adverse effects to an individual’s heart and nervous and immune systems.
- **“Stakeholders Clash Over Hot Spots Emissions Reporting Rules,” Inside Cal/EPA (August 4, 2006).** According to the article, changes to California’s Air Draft Toxics Hot Spots Emissions rules that the State’s Air Resources Board (“Board”) proposed were the major topic of discussion at a July 27, 2006 workshop that the Board sponsored. In particular, industry groups asserted that the Board should “provide specific direction to air districts on the types of emissions facilities must report. But the air districts are supporting the [B]oard’s current proposal, which allows them the flexibility to enforce stringent reporting requirements for various air toxic releases.” Since the public and the Board rely on the Hot Spots Program (“Program”) “to monitor facility emissions and notify residents of risks from airborne toxics,” any changes to the Program would be significant. One environmentalist expressed skepticism at the proposed changes and did not believe that the changes would significantly improve the Program from the viewpoint of public health. Specifically, the environmentalist noted that the “proposal still fails to address risk assessment, which environmentalists consider the biggest failure in the Program.” In addition, environmental justice concerns still remain,

because the “regulations only deal with health risks. The limitations of this approach continue to injure and kill people in our communities.”

- **“Pollution in Rialto Wells Rises,” San Bernardino County Sun (CA Aug. 1, 2006).** According to the article, the Environment California Research and Policy Center of Los Angeles issued a paper on August 1, 2006 that asserted that perchlorate contamination in Rialto, California’s groundwater had spiked. In addition, the paper criticized corporations for causing the pollution and failing to address it sooner. The perchlorate in Rialto was first discovered in 1997, and the paper concluded that some wells now contain water that is 200 times more contaminated than last year. The paper attributed the increase to heavy rains that raised the water table into “previously dry, perchlorate-laced soils,” which created a new source of contamination. Environmental justice groups expressed their concern and stressed the need for a resolution of the problem.
- **“Dry Cleaners Shun Suspect Solvent,” Rochester Democrat and Chronicle (N.Y. July 31, 2006) at 1A.** According to the article, some dry cleaners in New York have stopped using the chemical perchloroethylene (“PERC”), which is a volatile organic chemical that poses significant health risks. Although neither EPA nor the State’s Department of Environmental Conservation mandated a ban on PERC, several dry cleaners have avoided using it, despite the acknowledgement that PERC represents the best dry cleaning solvent. PERC signifies a particularly important “environmental justice issue, as minority families and those with lower incomes are far more likely to live in” apartments that have high levels of PERC. According to a State study, these apartments, which generally share buildings with dry cleaners, were particularly saturated with PERC contamination at unsafe levels. In addition, the article noted that “[a]partments, offices, day care centers, and stores above or adjacent to dry cleaners have been found to have elevated levels of PERC in the air.”
- **“Health Gaps Between Races Noted in Report,” Chattanooga Times and Free Press (TN July 28, 2006).** According to the article, the Tennessee Department of Health Issued a report on July 27, 2006 that outlined “many health disparities between white and black people across the State.” The report, entitled “Populations of Color Health Status Report,” found, among other things, that “[l]ife expectancy for black babies was about five years shorter than white counterparts born in 2002, [and] [b]lack were hospitalized in 2002 for diabetes-related illnesses nearly three times as often as whites.” The report, which included health statistics, economic data, and population data, noted that the “underlying reasons for the health disparities are complex but include access to health care, environmental hazards, and lack of healthy behaviors, such as exercise, among minorities.”

- **“SAB Concerns Add to Woes Facing Contentious TRI Reporting Changes,” Inside EPA (July 28, 2006).** According to the article, EPA’s Science Advisory Board (“SAB”) expressed concerns with EPA’s plans to scale back reporting under the Toxics Release Inventory (“TRI”), which “would reduce the availability of data for scientific research.” The SAB raised this issue in a July 12, 2006 report to EPA Administrator Stephen L. Johnson in articulating that the “proposed TRI changes ‘may hinder the advances of environmental research used to protect public health and the environment.’” The SAB’s concerns add to the controversy already surrounding the TRI proposal. (See related article on page 10). The SAB believes in the importance of the TRI information is important, which helps EPA to develop environmental programs and conduct analysis, including, among other things, environmental justice analysis.
- **“Boston Senator Stalls Business Over Environmental Justice Bill,” Associated Press State and Local Wire (July 28, 2006).** According to the article, Senator Dianne Wilkerson (D-MA) staged a filibuster on July 27, 2006 after her measure that promoted environmental justice was not approved. Specifically, Senator Wilkerson was “upset that the Senate was expected to vote on a proposal to speed up the permitting process for commercial businesses without including protections for communities with a high concentration of polluting facilities.” Senator Wilkerson believed that her measure was important to address the “disparities between rich and poor communities in illnesses due to hazardous waste.” Eventually, the Senators were not persuaded by Senator Wilkerson’s arguments and voted to approve the amendment that dropped her proposal.
- **“Letters to the Editor,” Sun Times (S.C. July 28, 2006) at 8.** The article set forth numerous editorials, including one from Ed Wilson, a Red Bluff Community activist, regarding the placement of an asphalt plant in Allentown, South Carolina. In characterizing the placement of the plant in Allentown as an act of environmental racism, Mr. Wilson articulated, “[y]ou won’t [allow] it in Myrtle Beach, the Dunes, or the Carolina Forest communities, where mostly white folks live. You would have an uprising in those communities. So now the Horry County Council wants to take up the first read on the ordinance. It should be tabled for good, never to come before the council again. Just ask the people in Pine Island about asphalt plants in residential communities. I stand shoulder-to-shoulder with the people of Allentown on this issue. In 2006, we as a people still face environmental racism . . .”
- **“House Adopts 12-Month Moratorium on Landfills,” Associated Press State and Local Wire (July 27, 2006).** According to the article, the North Carolina House of Representatives adopted a one-year moratorium on new landfills on July 26, 2006. The moratorium is particularly important to environmental advocates in light of four proposed landfills in Camden, Brunswick, Hyde, and Columbus counties

that “would significantly expand the State’s landfill capacity [by approximately 126 million tons of trash].” The moratorium will halt the permitting process for the proposed landfills and “implement a study to determine the implications of landfills on North Carolina.” In addition, the House bill calls for the establishment of a committee “to identify other environmental and economic concerns, specifically about minority and low-income communities.”

- **“Conference: Toxic Legacy Endangers Land and People,” Indian Country Today (Oneida, N.Y. July 26, 2006).** According to the article, a group of American Indian environmentalists met at the 14th annual Indigenous Environmental Network Protecting Mother Earth Conference on July 5-9, 2006. The conference, which included indigenous participants from throughout the United States and Canada, focused on “disease-causing toxins in humans from mining and other industries, climate change, border justice, and protection of sacred sites.” The participants at the conference were particularly concerned with environmental contamination from dioxins and furans on their tribal lands due to the chemicals’ associated neurological effects, immune system toxicity, and developmental disorders. According to one participant, “[t]here are still many environmental justice issues in Indian country that are not getting resolved. Native grass-roots groups and some of our tribal leaders are frustrated and angry. [There likely will be] an increase of Native activism doing more direct actions on environmental and economic justice issues.”
- **“DEQ Will Abide by Landfill Decision; But Closing Site Is a Mistake, Official Says,” Times-Picayune (July 26, 2006) at 1.** According to the article, the Louisiana Department of Environmental Quality (“DEQ”) promised to abide “by whatever decision local officials make about the future of the controversial Chef Menteur Highway landfill [(“Landfill”)] in eastern New Orleans.” While DEQ will abide by any decision, including the decision to close the Landfill, it warned New Orleans Mayor Ray Nagin that “closing the Landfill will significantly slow the City’s recovery from Hurricane Katrina and could cost the City significant amounts of money.” Mayor Nagin had indicated on July 13, 2006 that he would not renew an Executive Order to allow the Landfill to open on an emergency basis to expedite the removal of hurricane debris. While opponents of the Landfill laud the Mayor’s decision, particularly in light of two recently issued reports that indicate that the Landfill is environmentally unsafe, DEQ asserted that closing the Landfill will probably lead to an increase in illegal dumping and pose safety problems. The Landfill had raised numerous environmental justice issues, due to the large presence of minorities in residential areas near it.
- **“Costs Block Cure for Tainted Water,” Greenville News (S.C. July 23, 2006) at 1A.** According to the article, the cost to connect to a public

water line has prohibited some residents in Greenville, South Carolina from connecting and accessing clean drinking water. Instead, these residents continue to get their drinking water from private wells that contain large amounts of uranium, which can cause kidney damage and cancer. As a result of the prohibitive costs of making the connection, the Environmental Justice Coalition characterized the situation as one where “environmental injustice . . . needs to be solved.” The cost to hook up to the clean water line is \$2,540; however, no financial aid is available to do so for many of the residents who cannot afford to connect.

- **City News Service (July 21, 2006).** According to this untitled article, the Environmental Justice Unit of the Los Angeles City Attorney’s Office prosecuted a case against Palace Plating, Inc. that resulted in three years probation and a fine of \$65,000 for improper handling of hazardous materials. The case stemmed from complaints that parents of students near an elementary school raised due to asthma and other conditions that resulted from conditions at Palace Plating, Inc.’s plant, which was across the street from the school. The company pleaded no contest to one count of illegal disposal of hazardous waste and one count of illegal treatment of hazardous waste. In sending a “clear message” to the regulated community, the City’s action addressed the concern that families “in poorer communities - - mostly communities of color - - carry a greater burden from industrial pollution than other communities[, which] is unacceptable.”
- **“To Move Trash Out, New York City Dumps Trucks for Barges,” Associated Press Worldstream (July 20, 2006).** *See also* **“New York City Approves Marine-Based Trash Plan that Will Cut Truck Congestion,” U.S. Newswire (July 19, 2006).** According to the first article, New York City has approved a plan to ship its “mountains of trash” out of the City using barges. In approving this plan, New York abandoned using trucks to move the garbage, which New York Mayor Michael Bloomberg said “will reduce pollution from truck exhaust and help thin traffic congestion.” The plan has encountered opposition from various City Council members, residents, and community groups who are opposed to the use of barges. For instance, residents of the wealthy Upper East Side believe that a trash transfer station along the East River will lead to potential odor problems. In contrast, residents on the West Side believe that housing a giant recycling station in their immediate vicinity constituted environmental racism and characterized the City’s action as sweeping the “mess . . . poor and minority areas.” In contrast, the second article noted that Environmental Defense supported the plan and praised the New York City Counsel for approving it. In a statement, Environmental Defense congratulated the Mayor and the City Council for tailoring “a solid waste management plan that moves the City closer to the goals of clean air, less traffic congestion, improved recycling programs, and environmental equity than any previous trash plan.”

- **“Candidate Wants a ‘Healthy Texas,’” Beaumont Enterprise (TX July 19, 2006).** According to the article, the Democratic candidate for governor, Chris Bell, announced his plan for a “Healthy Texas” at a press conference on July 18, 2006. In announcing his plan, Mr. Bell cited the State’s poor air quality and stated that “poor air quality costs about \$25 billion a year in Texas in medical bills, lost jobs, and lost days at work.” In addition, he asserted that the West Side of the Port Arthur area was a target of unspecified environmental racism, such that children in the area could no longer play outside. Included among provisions of the plan are the enforcement of existing environmental protection regulations and the cessation of “secret deals” with industry.
- **“More Recent Editorials from Alabama Newspapers,” Associated Press State and Local Wire (July 20, 2006). *See also* “Landfill Plan Stirs Emotions in Black Belt,” Montgomery Advertiser (AL July 19, 2006) at A1.** The first article sets forth various editorials, including one from the *Tuscaloosa News* on the proposal to construct a landfill in Lowndes County, Alabama, which is “one of the blackest and poorest counties in Alabama.” The editorial stated that although the proposed development had potential economic benefits, local leaders remained skeptical of the proposal. The editorial praises the efforts of Congressman Arthur Davis (D-AL), who adopted a strategy for addressing areas targeted for landfills, which includes “a discussion of environmental issues.” The editorial concluded by advocating Congressman Davis’s approach. The second article provided more specifics on the proposed \$25 million landfill that Alabama River Partners, L.L.C. (“Alabama River”) wants to construct. The article also discussed the complaints of environmental racism that this project created among the residents who asserted that a need for economic growth existed in this poor county “but at what cost?” In response, Alabama River asserted that no environmental racism existed; rather, the project represented an “economic development project that will benefit the entire county.”
- **“Experts Warn Birth Defects Study Isn’t Tell-All; Follow-up to Examine If Link Is Exposure to Local Industry,” Corpus Christi Caller-Times (TX July 17, 2006) at A1. *See also* “Study: Birth Defects Higher in Nueces County; A Second Study Will Compare Areas in County,” Corpus Christi Caller-Times (TX July 13, 2006) at B1.** According to the articles, a study that the Texas Department of State Health Services released on July 13, 2006 revealed that “overall birth defects were 84 percent higher in Nueces County than in much of Texas.” The study spanned a period from 1996 to 2002 and demonstrated that birth defects are more prevalent in certain ZIP codes. Corpus Christi, which is part of Nueces County, also had a severe rate of birth defects that was 17 percent higher than in the rest of the State. Despite these findings, the author of the study cautioned “against using the study to draw a link between the City’s major industries and the defects.” Accordingly,



another study is currently underway to address that issue. The Citizens for Environmental Justice asserted that the current study “speaks volumes” and seeks legislative action to address the issue.

- **“Council Considers Crematorium, Concerns Mount; Richmond: Worries Rise Over More Air Pollution and a Location that Is Blocks Away from Community Centers,” Contra Costa Times (CA July 16, 2006) at F4.** According to the article, Richmond, California is considering changing its funeral ordinance to allow Stewart Enterprises (“Stewart”), one of the largest funeral corporations in the United States, to move its Apollo Crematorium, one of the busiest in the State, to Richmond. Residents of Richmond, which is “a city known for its heavy contributions to air and water pollution,” have “raised questions of environmental justice because cremation is associated with emissions of carcinogens, such as arsenic, hexavalent chromium, and chlorinated dioxins and furans.” Mercury emissions, in particular, represent the most serious concern, because mercury “is known to slow mental development and cause] . . . memory loss, attention deficit disorder, and fertility problems. Pregnant women and children are particularly vulnerable to mercury.” The article concluded by noting that the City’s Mayor and several council members “are not inclined to approve the change.”
- **“Historic Minority Health Summit Launches Healthy Lifestyles, Healthy Communities Initiative; Plan Created to Help South and East Los Angeles Communities Will be Model for Culturally Driven Health Education and Obesity Prevention Programs Nationwide,” PR Newswire US (July 14, 2006).** According to the article, a new initiative, known as “Healthy Lifestyles, Healthy Communities” (“Initiative”), was created based on a meeting at a “historic health summit of top thought-leaders, entitled, “Empowering Local Community, Informing National Policy Makers: A New Agenda to Address Health Disparities Conference,” in Los Angeles on Friday, July 7, [2006].” The Initiative proposes to “attack obesity in minority and other underserved communities in Los Angeles through culturally-competent means, including a series of community education/wellness events and efforts to increase the access of minority communities to environments that promote healthy eating and physical activity.” According to the conference participants, the education should be tailored to the community’s demographics. The article noted that the Initiative will “focus closely on the infrastructure of minority and other underserved communities.” The article concluded by noting the participation of Congresswoman Hilda L. Solis (D-CA) who articulated, “[t]he conference was a call to action by policymakers and local health providers to work together to find ways to end racial and ethnic health disparities.”
- **“Residents Wary of OWASA Spreading Biosolids,” News & Observer (Raleigh N.C. July 14, 2006) at B3.** According to the article, residents of

Orange County, North Carolina have requested that the Orange Water and Sewer Authority (“OWASA”) no longer spread sewage sludge over the land, including over the Eno River watershed, which is a source of drinking water. OSAWA currently spreads the material, which it calls biosolids, over farmland, after it undergoes the wastewater treatment process. However, at a meeting on July 13, 2006, the residents asserted that much was still “unknown about the impact of land application on neighbors, the environment, and the water supply” and noted the failure to perform a human health assessment. In addition, they expressed their dissatisfaction with OSAWA’s decision to spread the treated waste onto the farmland, characterizing the land application as “an environmental justice issue because it spreads biosolids in the Eno watershed.” In contrast, OSAWA continues to maintain that the treated waste is safe.

- **“Industry, Environmentalists Clash on Port Emissions Trading Plan,” Inside Cal/EPA (July 14, 2006).** According to the article, industry groups and environmentalists, as well as federal and state governmental officials are debating the “merits of integrating an emission trading program into . . . plans to reduce pollution from port activities” in California. Two potential options for emission credit trading were discussed, despite skepticism from environmentalists as to “the localized air quality benefits that industry claims emission trading would offer.” The first option, called the “open market” plan, would generate credits when the emissions rate of a regulated activity is reduced beyond the performance target. The second option, or “closed market” system, would issue credit allowances to existing sources based upon the plan’s performance targets and timetables. In response, one environmentalist articulated “longstanding environmental justice concerns with emissions trading - - specifically, its inability to clean up the air in the areas around ports - - which will continue to force environmental community opposition to the plan.”
- **“Press Release of Senator Menendez: Lautenberg and Menendez Block Bush Nominee for EPA Office; Senators Oppose Bush Plan to Restrict Public’s Right to Know about Toxic Chemicals at 160 Facilities in New Jersey,” Press Release (N.J. July 10, 2006).** The press release of Senator Robert Menendez (D-N.J.) announced that Senator Menendez and Senator Frank L. Lautenberg (D-N.J.) have placed “holds” on President Bush’s nominee to head EPA’s Office of Environmental Information. The holds represent disapproval to President Bush’s proposal to “dismantle the [Emergency Planning and Community Right to Know Act] that Senator Lautenberg authored in 1986. The proposed Bush changes would deny thousands of communities – including 160 in New Jersey – full information about the release of hazardous toxic emissions in their neighborhoods. Last month, the House of Representatives voted 231-187 to block the Bush Administration’s proposal through next year.”

Both Senators believe that this proposal abandons EPA's responsibility to Americans and will not allow the President's nominee to move forward.

- **"Texas Lawsuit Includes a Mix of Race and Water," New York Times (July 9, 2006) at 10.** The article discusses the plight of residents of Shreveport, Texas, a "historically black enclave in the East Texas Oilfields," who filed a lawsuit in federal court against the Texas Railroad Commission ("Commission"), which regulates the State's oil and gas industry. The lawsuit, filed in June, accused the Commission, which did not receive formal notice of the lawsuit, of "failing to enforce safety regulations and of 'intentionally giving citizens false information based on their race and economic status.'" In addition, the article noted that EPA's Inspector General is currently concluding its own investigation into the handling of the problem, which has prevented residents from the ability to "drink, cook, or bathe safely from their own wells since [EPA] found the groundwater contaminated with pollutants that included arsenic, benzene, lead, and mercury." There are 30,000 oilfield waste disposal sites throughout Texas, and no clear evidence existed that these residents were singled out for dumping. However, the residents believe that the dumping in their community followed a "pattern, documented by [EPA], of pollution hazards that disproportionately affect minorities." EPA has acknowledged that the groundwater poses health risks and has delivered bottled water to affected residents since last August.
- **"Activists Lobby Congress, EPA to Limit Industry Role in Selecting SEPs," Inside EPA (July 7, 2006).** According to the article, environmentalists have lobbied lawmakers and EPA "to bar companies from deciding which environmental projects are mandated to supplement fines and penalties levied under environmental settlements, while boosting community involvement in developing the projects, known as supplemental environmental projects ("SEPs")." EPA's SEPs policy, which was last updated in 1998, is at issue, since companies can fund SEPs rather than pay large fines for violations of the Clean Air Act ("CAA"). The environmentalists are particularly concerned with the findings in a report entitled, "Supplemental Environmental Projects: The Most Affected Communities Are Not Receiving Satisfactory Benefits." The report discussed numerous refinery and industry settlements where "companies chose to fund SEPs that did not help the environmental justice communities near the facilities where air act violations occurred," such as an August 1999 settlement that EPA reached with Citgo Refinery. The activists assert that SEPs should "specifically address the health and welfare of nearby communities." Instead, the current SEPs policy only encourages industry to "address environmental justice by funding projects that help low-income or minority populations near a facility where there has been a violation." One possible solution, according to the activists, is to establish a board of representatives from the affected environmental justice community to discuss the SEPs, which will allow for more

community involvement in the SEPs process. The article noted that Granta Nakayama, the Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance ("OECA") met with environmentalists last month and was aware of the "problem in getting the companies to agree to environmental justice projects." Although Mr. Nakayama was very receptive to the environmentalists, the article asserted that "he made no commitments." In addition, the environmentalists have apparently attempted to persuade lawmakers to offer an amendment to legislation related to refinery permit streamlining. Specifically, they propose that the amendment "require EPA to amend its SEP policy or to require in law that SEPs address environmental justice concerns." However, the article noted that the environmentalists have not been successful in this regard, and such legislation remains under discussion.

- **"Billboard Warns Potential Homebuyers of Region's Health Threats," City News Service (July 6, 2006). See also "Pollution: Sign on Hwy. 60 Blasts Region's Air Quality; Billboard Backs Bad-Air Ruling; Activists Suggest Home Buyers Ask About Health Impacts," Press Enterprise (Riverside, CA July 6, 2006) at B1.** According to the article, the Center for Community Action and Environmental Justice ("Center") has posted a billboard on Highway 60 that informs motorists entering Riverside County in Mira Loma, California that they will encounter "some of the dirtiest air in the Nation." Specifically, the billboard articulates "'Welcome to Riverside County! We're #1. Dirtiest Air in the Nation. Deadly Health Impacts.'" The billboard coincided with a decision by a Superior Court Judge on June 30, 2006 that struck down Riverside County's approval of a 425-home development project in Mira Loma, on the basis that the Riverside County Board of Supervisors failed to consider air quality issues. The Mira Loma area contains some of the Nation's highest fine particulate levels, which is attributable to soot-emitting diesel trucks. According to the second article, diesel soot may "cause asthma attacks and premature deaths." A representative of the Center, which has filed five lawsuits against Riverside County for failing to adequately consider environmental issues in approving plans for large residential projects, expressed hope that its action, coupled with the court decision, will force River Side County to "stop sacrificing people's health . . . to make a few more bucks."
- **"On Environmental Justice: ADEM Too Slow in Creating Unit," Montgomery Advertiser (AL July 5, 2006) at A7.** The editorial criticizes the Alabama Department of Environmental Management ("ADEM") for its failure to establish an environmental justice unit, despite the Alabama Environmental Management Commission's unanimous approval in August 2004 to hire someone to oversee the creation of such a unit. ADEM, which continues to search for someone, recently lost its prior environmental justice coordinator, who retired for health reasons. The editorial asserted that the "lack of deliberate speed in getting this unit

off the ground could be seen as a lack of commitment on [ADEM's] part to the concept of environmental justice.” The editorial noted that ADEM appears to lack sensitivity with regard to environmental justice and has a “reputation for years of not being aggressive enough in regulating businesses to protect the environment and of being insensitive to the needs of everyday Alabamians.” It concludes that one of the best ways to rectify this perception is to quickly create this environmental justice unit and “ensure that it is staffed with hard-nosed ombudsmen dedicated to protecting everyday Alabamians on environmental issues.”

- **“E. Palo Alto Builds New Determination to Drive Out Recycler,” Inside Bay Area (CA July 5, 2006).** According to the article, an accidental release of a toxic plume of chemicals on June 3, 2006 has caused leaders and residents of East Palo Alto to seek ways to drive out Romic Environmental Technologies Corporation (“Romic”), which had previously faced more than two decades of such efforts to evict it. Romic recycles toxic waste that manufacturing companies throughout the State generate. Although it provides a useful service and employs roughly 220 workers, it continues to face vocal opposition, as activists steadfastly believe that the plant is responsible for many of the community’s health ailments. According to the article, the “feud in East Palo Alto between the hazardous waste recycler and community members has its roots in the concept of environmental justice.” Specifically, while the activists favor recycling and conservation, they do not want these benefits to be “achieved at the expense of communities of color, where many of them are sited.”
- **“Groups Fighting Distrust,” San Antonio Express-News (July 5, 2006) at 6SE. See also “Railport Plan Worries Residents,” San Antonio Express-News (July 5, 2006) at 1SE.** According to the first article, residents near the old Kelly Air Force Base (“Kelly”), which is now Port San Antonio, raised three primary concerns during a roundtable meeting on June 24, 2006 that the Kelly Area Collaboration (“KAC”) organized. The KAC represents an initiative of the Interagency Working Group on Environmental Justice. The meeting, which was the first of three roundtables that focus on environment, health, and initiatives, included representatives of the Texas Commission on Environmental Quality, the Quintana Neighborhood Association, the Southwest Workers’ Union, and the Air Force Real Property Agency. The three concerns discussed at the meeting were faster environmental cleanup, more communication between government agencies and the community, and a decrease in noise and air pollution. According to one participant, the benefit of the roundtable meeting was that residents were provided equal footing to air their concerns. Another participant noted that distrust existed between the residents and the governmental entities, such that the meeting allowed for both sides to work together productively. The article concluded by noting that the time ran out before a discussion for the implementation of solutions could begin. However, a representative on the planning

committee asserted that “all efforts will be made to address the residents’ concerns.” The next roundtable meeting will occur on August 26, 2006 and will focus on health issues. In the second article, residents also raised concerns with the East Kelly Railport project, which proposed to earmark \$35 million for the redevelopment of Part San Antonio. Specifically, the project would make Port San Antonio a “global distribution center utilizing ground and air transportation.” The residents, who “have a history of being ignored,” voiced concerns with the potential impacts of the project, such as increased exposure to hazardous chemicals, due to the additional number of planes, trucks, and trains in the area that would likely result from the project.

- **“GOP Brownfields Tax Incentives Legislation Faces Major Hurdles,” Superfund Report (July 3, 2006).** According to the article, legislation that was recently introduced in Congress to provide tax incentives to developers remediating brownfields has received lukewarm interest and likely will receive opposition from Democrats who had issues with earlier drafts of the legislation. The proposal would allow developers to seek a tax credit for costs associated with abating or controlling petroleum products or other hazardous substances, provided that the developers can prove that their remediation plan will benefit the state and local economy. The timing of the proposed legislation coincides with a request from the National Environmental Justice Advisory Counsel (“NEJAC”) to EPA for the Agency to “examine whether brownfields redevelopment projects contribute to gentrification.” In addition, the NEJAC wanted EPA to expand its role in local zoning decisions. Critics of the legislation “argue that demand for redevelopment . . . will lead to more remediation of brownfields, and therefore large tax incentives should not be used as an added encouragement.” In addition, one critic wondered whether the “redevelopment provisions” contained within the legislation “satisfy earlier requests . . . [to] make tax credits available to parties only after they analyze the environmental justice impacts of redevelopment projects.”
- **“Questions Continue Over Brewery Demolition,” New York Times (July 2, 2006) at 14NJ2.** According to the article, residents in Newark remain concerned with the demolition of the Pabst Brewery that is ongoing to make way for new retail space and affordable housing. In December 2004, residents “filed a petition asking the State’s Environmental Justice Task Force to investigate whether asbestos or lead would be released into the neighborhood during the demolition process. The Task Force investigates questions and concerns about environmental hazards that might adversely affect minority communities and poor neighborhoods.” To date, the Task Force has not found any problems with the demolition work.
- **“Landfill Is Not Toxic, Say City and La.; But Opponents Say Tests Practically Useless,” Times-Picayune (July 1, 2006) at 1.** According to

the article, New Orleans Mayor Ray Nagin asserted on June 30, 2006 that the Chef Menteur Landfill (“Landfill”) was not toxic based upon results of new air and water tests. However, critics of the Landfill responded that the tests were useless and failed to substantiate Mayor Nagin’s assertion. The Department of Environmental Quality (“DEQ”), which supports the Landfill, noted that the testing results, in which water was tested for nine criteria and air for 42 contaminants, were ““below any health risk levels.”” However, the critics asserted that the actual contaminants present in the Landfill were not tested and that all the “wrong things” were tested. While the air and water may not be currently toxic, the critics articulate that the Landfill “itself could easily be toxic.” In addition, the article discussed a meeting that occurred on June 29, 2006 between DEQ, local politicians, community leaders, EPA, and a representative of the White House Initiative on Asian American Pacific Islanders Affairs. One of the community leaders from the Louisiana Environmental Action Network (“LEAN”) expressed disappointment with the meeting, because DEQ rejected the community’s proposal to close “the landfill until more definitive test results are available, and [allow] the City Council to reconsider the Landfill’s zoning variance.” The Landfill raised environmental justice concerns due to the health risks that it poses and the fact that the community around the landfill is composed heavily of Vietnamese-Americans.

- **“Parlier Air Sampling Project Issues First Report,” Western Farm Press (July 1, 2006) at 5.** According to the article, a report from the California Department of Pesticide Regulation (“DPR”) on air sampling of pesticides at schools in Parlier, California was released. The sampling, which is part of the California Environmental Protection Agency’s Environmental Justice Action Plan, sought to determine “if residents are exposed to pesticides in the air, which pesticides in what amounts are involved, and whether the amounts are harmful to humans – particularly children.” In conducting the sampling, DPR used “health screening levels” to determine the potential health effects of exposure to chemicals. One unique aspect of the effort in Parlier that differs from the other five projects currently ongoing in the State is that input from the community has been sought in the form of a local advisory group, as well as a technical advisory group. Air monitoring is planned to continue until December 2006.
- **“Dispute Over ARB Authority to Regulate Ship Emissions Near Showdown,” Inside Cal/EPA (June 30, 2006).** According to the article, a dispute between California’s Air Resource Board (“ARB”) and the shipping industry over the ARB’s authority to regulate ship emissions off the coast will likely lead to legal action. The shipping industry asserted that ARB lacks regulatory authority “to implement or enforce a regulation limiting emissions from auxiliary diesel engines and diesel-electric engines on ocean-going vessels.” ARB had adopted a regulation last

December that would reduce emissions from ocean vessel auxiliary engines that would take effect in 2007. The regulation is “considered critical to help reduce significant marine vessel emissions that affect port areas . . . [and contribute] to the Regions’ ongoing failure to attain federal ozone standards, and disproportionately impact environmental justice communities.”

- **“Environmentalists Challenge EPA Refinery Operations Rule,” Inside Cal/EPA (June 30, 2006).** According to the article, environmentalists in California have sued EPA due to recent amendments to its National Emission Standards for Hazardous Air Pollutants: General Provisions Rule, which relate to “certain aspects of startup, shutdown, and malfunction (“SSM”) requirements on large sources subject to national emission standards for hazardous air pollutants.” Earthjustice filed a petition, on behalf of other environmental justice groups, to sue EPA in the United States Court of Appeals for the District of Columbia on June 19, 2006. Environmental justice groups assert that the amendments fail “to require facility operators to minimize emissions during [SSM] events” and argue that the amendments, in their current form, pose health risks for residents during malfunction events. In addition, Earthjustice submitted a petition to EPA’s Administrator, Stephen L. Johnson, on June 19, 2006 requesting EPA to reconsider the recent amendments. According to the article, EPA did not comment on the lawsuit.
- **“Surface Transportation Board Issues Decision on Consolidated Rail Corporation -Abandonment Exemption - in Wayne County, MI,” U.S. Fed News (June 23, 2006).** The article set forth the decision of the United States Department of Transportation’s Surface Transportation Board (“Board”) issued on June 23, 2006 in the case of *Consolidated Rail Corporation - Abandonment Exemption – In Wayne County, MI* (No. AB-167). The Board concluded that an Environmental Impact Statement process was unnecessary in this case and invited public comment on the Environmental Assessment by July 10, 2006. In this case, Consolidated Rail Corporation (“Conrail”) sought an exemption from certain statutory requirements with regard to the abandonment of two contiguous lines of railroad in Wayne County, Michigan. Conrail submitted an environmental report in support, which concluded that the quality of the human environment would not be significantly affected due to the abandonment, or any post-abandonment activities. In addition, Conrail provided this environmental report to a number of appropriate federal, state, and local agencies, including EPA, as the Board’s environmental rules require. EPA provided numerous comments on the report, including that the “proposed abandonment is located in the community of Highland Park, which is an economically depressed community that qualifies for Environmental Justice consideration.” The Board “assessed the potential impacts of the proposed abandonment to determine if it could result in disproportionately high or adverse impacts on minority or low-income



communities. Based on available information, [the Board] determined that the proposed abandonment does not warrant an Environmental Justice analysis because abandonment . . . would not adversely affect the community. Rather, [the Board] believes that abandonment of this segment could have a beneficial impact in the areas of noise and safety by removing the rail line from the community.”

- **“The Quest for Environmental Justice; Human Rights and the Politics of Pollution; Ecology – Come Hell or High Water: Hurricane Katrina and the Color of Disaster; Book Review,” National Catholic Reporter (June 16, 2006) at 6a(2).** The article provides book reviews for two books that discuss the aftermath of Hurricane Katrina. The first book, *The Quest for Environmental Justice: Human Rights and the Politics of Pollution*, was written by Doctor Robert D. Bullard. Doctor Bullard’s book details the history of environmental racism in America and provides numerous case studies, such as the case of Claiborne Parish in rural Louisiana. In addition, Doctor Bullard “highlights ‘a clear racial pattern’ in the nationwide, multistage site screening and selection process with chilling statistical deduction.” The article noted that the book focuses on resistance, in that it details communities who took on the companies and won in the “growing environmental justice movement.” The second book, *Come Hell or High Water: Hurricane Katrina and the Color of Disaster*, was written by Michael Eric Dyson, which examines recent common discussion items related to the aftermath of Hurricane Katrina. Among other things, Mr. Dyson’s book examines the role of religious views in the debate surrounding Hurricane Katrina and noted that “[o]n the Gulf Coast, humans fell short, not God; humans and human institutions should be called to account, not God.”

## 2. **Recent Litigation.**

- **South Camden Citizens in Action v. New Jersey Dep’t Env’tl. Protection, No. 01-702 (FLW), 2006 U.S. Dist. LEXIS 45765 (D.N.J. March 31, 2006).** The United States District Court for the District of New Jersey granted summary judgment to Defendants in a case involving purported civil rights violations with regard to Plaintiffs’ enjoyment and use of their homes. Specifically, Plaintiffs contended that Defendants violated Section 601 of Title VI of the Civil Rights Act of 1964 (“Title VI”) by granting permits to St. Lawrence Cement Co. (“SLC”) to construct and operate a blast furnace in the Waterfront South neighborhood in Camden, New Jersey. In finding that Plaintiffs could not prove that Defendants intentionally discriminated against them through the issuance of permits to SLC under Title VI, the court considered numerous factors. For example, it considered whether disparate impacts existed due to the issuance of the permits. Plaintiffs identified a screening model that one of Defendants’ scientists created as evidence that a disparate impact

existed. The model, which identified areas where potential environmental equity concerns existed, indicated that “‘African-Americans and Hispanic Americans . . . had more than average exposure to air toxics’” statewide. In addition, the model was created as part of the Defendants’ newly proposed Environmental Equity Policy (“Policy”), which would incorporate environmental equity considerations into the permitting process. However, Defendants countered that the new Policy was only proposed and never adopted or implemented. In addition, the proposed model was only intended as a “potential indicator” in the environmental justice process and “not intended to provide a conclusion as to whether an area was subject to environmental inequity.” Moreover, the model was not completed when Defendants tested it in Camden, such that it was impossible to draw any conclusions based on the incomplete data. While the court found that evidence existed that the “environmental effects of locating the SLC facility [in Camden] potentially bear more heavily upon minority groups, than non-minorities,” disparate impacts alone were not determinative in concluding that intentional discrimination occurred. The court also considered the Defendants’ historical background to see whether Defendants had a history of granting permits or undertaking enforcement actions in a discriminatory manner. The Plaintiffs alleged that Defendants undertook efforts to avoid responsibility under Title VI by creating the Policy in response to EPA’s *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (“Guidance”) (February 5, 1998), which the former Commissioner of the New Jersey Department of Environmental Protection (“DEP”) believed had a “‘very negative implication upon New Jersey . . . because [of] the potential to invalidate permits already issued by DEP.’” The Commissioner wanted an alternative to the Guidance, which “emphasizes community outreach and a proactive approach to environmental equity.” The court noted that the Policy was never implemented. However, even if the Policy was implemented and the Plaintiffs’ assertions were correct, the court noted that they bore the burden of demonstrating that DEP attempted to “evade civil rights protections and that its policies were grounded in discrimination.” Here, the court determined that Plaintiffs would not prevail even if the Policy were less stringent than the Guidance, because the Guidance clearly was “intended to provide a framework for the processing by EPA’s Office of Civil Rights” (“OCR”) of Title VI complaints that alleged discriminatory effects due to the issuance of local or state permits.” In other words, the “Guidance outlines the specific steps that the OCR is to follow when processing Title VI complaints . . . [and] nothing within the [Guidance suggests] that DEP was required to adopt or follow it.” Moreover, the court held “[t]he fact that [DEP] sought to create its own front end policy that would address environmental equity questions early on in the process rather than later, which still left open the possibility that permits it already issued could later be invalidated by the OCR or EPA, may be evidence that [the former Commissioner] and the

DEP sought to approach environmental justice differently, but it is not that they sought to evade it. . . . Even when granting all inferences to Plaintiffs, there is no evidence of an effort on the part of [the former Commissioner] to evade environmental equity. Therefore, the Court finds that the DEP's work towards creating its own policy did not constitute avoidance or frustration of earlier efforts at non-discrimination." Accordingly, the court concluded that "Plaintiffs have not shown that the historical background of the decision to issue the permits to SLC is evidence of [DEP's] intent to discriminate." Finally, the court also held that DEP's failure to conduct an environmental justice or environmental equity analysis did not indicate a discriminatory intent. Accordingly, the court concluded that when it granted "all inferences in favor of Plaintiffs, including evidence of potentially discriminatory enforcement and of a foreseeable disparate impact, Plaintiffs still fail to establish that [DEP] issued permits to SLC because of, not merely in spite of, its adverse effects upon the minority community of Waterfront South."

### 3. **Regulatory/Legislative/Policy.**

The following items were most noteworthy:

#### A. **Federal Congressional Bills and Matters.**

- No noteworthy "Federal Congressional Bills and Matters" were identified for this time period.
- *Miscellaneous House and Senate Congressional Record Mentions of Environmental Justice.*  
 — **152 CONG. REC. E. 1413 (daily ed. July 13, 2006) (statement of Rep. Rangel).** Congressman Charles B. Rangel of New York (D-District 15) addressed the House to introduce into the *Congressional Record* a letter that he received from the United Church of Christ regarding the deleterious effects of the Earth's climate on poor communities "who have high concentrations of people of color." In noting that communities of color "are burdened with poor air quality," Congressman Rangel asserted that "these communities will become even more vulnerable to climate-change related respiratory ailments, heat-related illness, and death." Congressman Rangel found it ironic that while people of color are less responsible for climate change, they will suffer from it the most. Among other things, the letter asserted that "[i]n 1987, the existence of a nationwide pattern of disproportionate environmental risk based on race was demonstrated for the United States. The evidence challenged the United States environmental movement to recognize its tendency to ignore issues of race, class, and gender when setting agendas for social action. . . . [T]o look at the issue of global warming as one that is in opposition to

those confronted by the environmental justice movement will be a mistake.” The letter concludes this point by stating that the “global environmental justice movement compels us to rethink our understanding of global environmental problems and existing proposals to solve them.”

- **Federal Register Notices.**

- **DOD, Intent to Prepare a Draft Environmental Impact Statement for Mississippi Coastal Improvements Program, Hancock, Harrison, and Jackson Counties, MS, 71 Fed. Reg. 45,537 (Aug. 9, 2006).** The Mobile District of the United States Army Corps of Engineers (“Corps”) of the United States Department of Defense (“DOD”) announced its intent to prepare a Draft Environmental Impact Statement (“DEIS”) “to address the potential impacts associated with actions to comprehensively address hurricane and storm damage reduction, prevention of saltwater intrusion, preservation of fish and wildlife, prevention of erosion, and other related water resource purposes in coastal Mississippi. These actions are related to the consequences of hurricanes in the Gulf of Mexico in 2005.” The DEIS will look at the potential social, economic, and environmental impacts and benefits that the proposed projects and alternatives offer. Among the major issues that the DEIS will analyze are the “socioeconomic impacts, including effects on children, minorities, and economically disadvantaged groups per Executive Order 12898 (Environmental Justice) and Executive Order 13045 (Protection of Children).”
- **EPA, Final Extension of the Deferred Effective Date for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas, 71 Fed. Reg. 45,492 (Aug. 9, 2006).** EPA proposed a “final extension of the deferred effective date of air quality designations for certain areas of the country that have entered into Early Action Compacts. Early Action Compact areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (“CAA”) requires.” EPA proposes to extend the deferral effective date for the 14 areas that had entered into Early Action Compacts until April 15, 2008 and solicits comments on this proposal by September 8, 2006. With regard to Executive Order 12898, EPA believes that “this proposed rule should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety.”
- **EPA, Consumer and Commercial Products: Control Techniques Guidelines in Lieu of Regulations for Lithographic**

**Printing Materials, Letterpress Printing Materials, Flexible Packaging Printing Materials, Flat Wood Paneling Coatings, and Industrial Cleaning Solvents,” 71 Fed. Reg. 44,522 (Aug. 4, 2006).** EPA proposes, pursuant to CAA § 183(e)(3)(C), to “determine that control techniques guidelines documents (“CTGs”) will be substantially as effective as national regulations in reducing emissions of volatile organic compounds in ozone [National Ambient Air Quality Standards (“NAAQS”)] nonattainment areas from the following five product categories: lithographic printing materials, letterpress printing materials, flexible packaging printing materials, flat wood panel coatings, and industrial cleaning solvents. Based on this determination, EPA may issue CTGs in lieu of national regulations for these product categories.” Written comments on this proposed determination are due by September 5, 2006, unless a public hearing is requested by August 11, 2006. With regard to Executive Order 12898, “EPA believes that the listing action, proposed determination, and the proposed draft CTGs should not raise any environmental justice issues.”

- **EPA, Organophosphate Cumulative Risk Assessment; Notice of Availability, 71 Fed. Reg. 43,740 (Aug 2, 2006).** EPA announced the availability of its cumulative risk assessment for the organophosphate group of pesticides and solicited public comment by October 2, 2006. The Food Quality Protection Act (“FQPA”) required EPA to undertake a cumulative risk assessment to evaluate whether all registered uses of organophosphate pesticides presented risk to food or drinking water. In addition, EPA must examine the hazards associated with non-occupational exposure. The organophosphate group includes over 30 pesticides. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to organophosphate pesticides, compared to the general population.”

- **EPA, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion, 71 Fed. Reg. 43,067 (July 31, 2006).** EPA announced that it would take “direct final action to codify a longstanding generator-specific delisting determination for brine purification muds (K071) generated by Olin Corporation at its facility in Charleston, Tennessee.” The rule takes effect on September 29, 2006 without further notice, unless EPA receives adverse comment by August 30, 2006. With regard to consideration of Executive Order 12898, EPA asserted that its Office of Solid Waste and Emergency Response “formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues . . .

[The] final rule applies to a single waste at a single facility. [EPA has] no data indicating that [the] final rule would result in disproportionately negative impacts on minority or low-income communities.”

- **EPA, Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes, 71 Fed. Reg. 42,928 (July 28, 2006).** EPA announced that it amended its regulations under the Resource Conservation and Recovery Act (“RCRA”) to “streamline management requirements for recycling of used [Cathode Ray Tubes (“CRTs”)] and class removed from CRTs. The amendments exclude these materials from the RCRA definition of solid waste if certain conditions are met.” The final rule takes effect on January 29, 2007. With regard to Executive Order 12898, the rule “would streamline hazardous waste management requirements for used cathode ray tubes sent for recycling. Facilities that would be affected by [the] rule include those generating hazardous waste computers and televisions sent for recycling. Also affected would be facilities [that] recycle these materials. . . . The wide distribution of affected facilities throughout the United States does not suggest any distributional pattern around communities of concern. Any building in any area could be affected by [the] rule. Specific impacts on low-income or minority communities, therefore, are undetermined. . . . Overall, no disproportional impacts to minority or low-income communities are expected.”
- **DOI, Long-Term Miscellaneous Purposes Contract, Carlsbad Irrigation District, New Mexico, 71 Fed. Reg. 41,467 (July 21, 2006).** The Bureau of Reclamation (“Bureau”) of the United States Department of the Interior (“DOI”) announced the availability of the Long-Term Miscellaneous Purposes Contract Final Environmental Impact Statement (“FEIS”) for Eddy County, New Mexico. The contract will allow the New Mexico Interstate Stream Commission to use project water in the Carlsbad Irrigation District for purposes other than irrigation. The FEIS assessed, among other things, whether the preferred alternative, which was the execution of the long-term miscellaneous purposes contract, had any potential disproportionate effects on minority or low-income communities. A Record of Decision, which will state the action that will be implemented, will be made 30 days after the release of the FEIS.
- **EPA, PM2.5 De Minimis Emission Levels for General Conformity Applicability, 71 Fed. Reg. 40,420 (July 17, 2006).** EPA announced that would amend its regulations “relating to the [CAA] requirement that Federal actions conform to the appropriate State, Tribal, or Federal implementation plan for attaining clean air (“general conformity”) to add *de minimis* emissions levels for

particulate matter with an aerodynamic diameter equal or less than 2.5 microns (“PM<sub>2.5</sub>”) NAAQS and its precursors.” The rule took effect on July 17, 2006. With regard to Executive Order 12898, EPA did not believe that the revisions to the regulations would raise any environmental justice issues. Rather, the “revisions to the regulations would, if promulgated, revise procedures for other Federal agencies to follow. They do not disproportionately affect the health or safety of minority or low-income populations. [EPA] encourages other agencies to carefully consider and address environmental justice in their implementation of their evaluations and conformity determinations.”

- **DOT, Notice of Proposed Title VI Circular, 71 Fed. Reg. 40,178 (July 14, 2006).** The Federal Transit Administration (“FTA”) of the United States Department of Transportation (“DOT”) is revising and updating its Circular 4702.1, entitled “Title VI Program Guidelines for Urban Mass Transit Administration Recipients” (“Circular”). Comments must be received by August 14, 2006. Among other things, the revised Circular seeks to address environmental justice issues. For instance, the Circular “would clarify that recipients [of financial assistance] should assess the impacts to minority and low-income populations of construction projects subject to a Categorical Exclusion type (d) (“a documented categorical exclusion”), Environmental Assessment, or Environmental Impact Statement. Recipients may fulfill this requirement by including the steps described in the environmental justice analysis section of the proposed circular section in their NEPA process and documentation . . .” In addition, the proposed Circular “would contain guidance and procedures that recipients and subrecipients are required to follow to identify and address adverse and disproportionate impacts of their programs, policies, and activities on minority and low-income populations within their jurisdictions.”

- **EPA, Environmental Impact Statements and Regulations; Availability of EPA Comments, 71 Fed. Reg. 40,095 (July 14, 2006).** EPA announced the availability of its comments pursuant to the Environmental Review Process (“ERP”), as required by Section 309 of the CAA and Section 102(2)(c) of the National Environmental Policy Act (“NEPA”). With regard to the final Environmental Impact Statements, EPA continued to raise concerns with the “Grand Gulf Early Site Permit Site,” with regard to the issuance of an Early Site Permit for construction and operation. Specifically, EPA expressed concerns “about the uncertainty of regulatory limits for offsite releases of radionuclides for the current candidate repository site. . . . EPA also recommends continued coordination with Environmental Justice communities in

the area to ensure that their concerns are addressed as the project progresses.”

- **DOT, Environmental Impact Statement; San Bernardino County, CA, 71 Fed. Reg. 38,207 (July 5, 2006).** DOT’s Federal Highway Administration (“FHWA”) announced that it intends to prepare an Environmental Impact Statement (“EIS”) for the proposed U.S. 395 Freeway/Expressway project. The entire proposed project length is about 45 miles long. No preferred alternative has been selected; however four alternatives, including the No Build alternative, will be considered. The alternatives “will be further refined through efforts conducted under . . . [among other things] Executive Order 12898 regarding environmental justice.”
- **DOD, Record of Decision for Navy Air-to-Ground Training at Avon Park Air Force Range, Florida, 71 Fed. Reg. 37,915 (July 3, 2006).** DOD’s Department of the Navy (“Navy”) issued a Record of Decision (“ROD”) announcing that it would conduct “all components of ‘air-to-ground ordnance delivery and training’ of integrated and sustainment levels of Fleet Forces Command’s Fleet Readiness Training Program at Avon Park Air Force Range, Florida.” A Draft and Final EIS were prepared. The Final EIS included identification of the preferred alternative and “analyzed environmental impacts and the potential magnitude of those impacts relative to 13 categories of environmental resources[, including environmental justice]. With regard to environmental justice, the ROD articulated that based on a review of, among other things, noise, safety, land use, and recreation impacts, “there will not be any disproportionately high or adverse impact on minority and low-income populations.”
- **EPA, Environmental Impact Statements and Regulations; Availability of EPA Comments, 71 Fed. Reg. 37,933 (July 3, 2006).** EPA announced the availability of its comments pursuant to the ERP, as required by CAA § 309 and NEPA § 102(2)(c). With regard to the draft Environmental Impact Statements, EPA raised environmental concerns with the “New York/New Jersey/Philadelphia Metropolitan Area Airspace Redesign Project, to Increase the Efficiency and Reliability of the Airspace Structure and Air Traffic Control System,” due to the project’s cumulative impacts. In addition EPA “also requested information on outreach to environmental justice communities impacted by noise and mitigation/minimization of noise exposure to those communities.”
- **DOD, Availability of a Supplement to the Draft Environmental Impact Statement for the Proposed Construction of a Dredged Material Containment Facility in the Patapsco River, at Masonville, Baltimore City, MD, 71 Fed. Reg. 37,545 (June 30, 2006).** In accordance with NEPA, DOD’s Corps, Baltimore



District, has prepared a DEIS for the “proposed construction of a dredged material containment facility by the Maryland Port Administration.” The proposed alternative is to construct a stone, sand, and cofferdam structure that would impact approximately 131 acres of water, including wetlands. Comments on the DEIS are due by August 14, 2006. Environmental justice represents one of the relevant factors that will be considered.

- **DOT, Environmental Impact Statement: City and County of Denver, CO, 71 Fed. Reg. 37,637 (June 30, 2006).** DOT’s FHWA and FTA jointly issued notice that announced that the Joint EIS for transit and high improvements in the City and County of Denver and the City of Aurora, Colorado will be revised to create two separate environmental documents. Two EISs will be prepared for the different highway and transit project elements, instead of creating a combined highway and transit study as previously planned. With regard to the I-70 East EIS, FHWA is particularly concerned with environmental justice implications.

**B. State Congressional Bills and Matters.**

- **California, Assembly Concurrent Resolution 142, introduced on April 6, 2006 by Assemblywoman Jenny Oropeza (D-District 55). Status: Rereferred to Senate Committee on Appropriations on August 10, 2006.** The Bill proposed to designate the Interstate 5 and Interstate 710 interchange in Los Angeles as the Marco Antonio Firebaugh Interchange. In addition, the Bill requests that the Department of Transportation determine the cost of appropriate signs that reflect this designation and, subsequently, to erect those signs. According to the Bill, Mr. Firebaugh passed away at the age of 39, while running for election to the California State Senate. He had previously served the State Assembly from 1998 to 2004 for the 50th District in Southeast Los Angeles County, after being elected at the age of 32. Mr. Firebaugh was particularly recognized for his “impressive legislative and advocacy record on behalf of California’s working families and their children” and was a champion for the Latino community. In addition, Mr. Firebaugh “demonstrated outstanding leadership in introducing legislation aimed at improving the lives of immigrants and low-income communities that are most severely impacted by air pollution.” Finally, the Bill acknowledged Mr. Firebaugh’s recognition of the importance of environmental justice issues,” which led him to author “air quality legislation that provides funding for the State’s most important air emissions reduction programs” and “ensures that state funding be targeted to low-income communities that are most severely impacted by air pollution.”
- **California, Senate Bill 1377, introduced on February 21, 2006 by Senator Nell Soto (D-District 32). Status: In Assembly. Rereferred to**

***Assembly Committee on Appropriations on August 7, 2006.*** This Bill will allow the State Air Resources Board to enter into voluntary agreements, including a memorandum of understanding, with “owners or operators of sources of air pollution to achieve emissions reductions. Any agreement to reduce emissions cannot be longer than two years in duration. Before ratifying an agreement, the State Board shall, among other things, prepare a written report that will include an assessment of the local cumulative impacts and environmental justice implications.

- **California, Senate Bill 1505, introduced on February 23, 2006 by Senator Alan S. Lowenthal (D-District 27). *Status: Rereferred to Assembly Committee on Appropriations on August 7, 2006.*** This Bill declares the Legislature’s intent that when the California Hydrogen Highway Network Blueprint Plan (“Plan”) is implemented, it will be done in a clean and environmentally responsible and advantageous manner. The Bill would require the State Air Resources Board to adopt regulations that will ensure that state funding for the production and use of hydrogen contributes to the reduction of greenhouse gas emissions, criteria air pollutants and toxic air contaminants. The Bill includes, among other things, a requirement that the California Environmental Protection Agency’s Environmental Justice Advisory Committee meet at least once annually to discuss the production and distribution of hydrogen fuel in the State.
- **California, Assembly Bill 32, introduced on December 6, 2004 by Congressman Fabian Nunez (D-District 46). *Status: Rereferred to Senate Committee on Appropriations on August 9, 2006.*** This Bill enacts the California Global Warming Solutions Act of 2006 and requires the California Air Resources Board (“CARB”) to adopt regulations by January 1, 2008 and establish a program to report and verify statewide greenhouse gas emissions. In addition, the Bill authorizes CARB to adopt, on or before January 1, 2008, a statewide greenhouse gas emissions limit to become effective in 2020. Moreover, the Bill mandates that the Governor establish an interagency task force to coordinate investments of state moneys and state programs to reduce emissions of greenhouse gases, promote economic growth, make information publicly available to assist sources of greenhouse gases to meet the requirements of this Bill. The interagency task force should establish an advisory committee that includes such stakeholders as environmental justice groups. Finally, the Bill requires the California Energy Commission to update its inventory of emissions of greenhouse gases to maintain a reasonably comprehensive inventory of California's emissions of greenhouse gases. This update should take place every 5 years.
- **California, Assembly Bill 1101, introduced on February 22, 2005 by Assemblywoman Jenny Oropeza (D-District 55). *Status: Status:***

***Passed Assembly and Sent to Senate on January 31, 2006. Read Second Time on August 10, 2006.*** AB 1101 would require facilities with large volumes of diesel exhaust to develop plans to reduce emissions. The Bill defines these facilities as “diesel magnets” and regulates them through CARB and local air boards. Specifically, the Bill requires CARB to prepare and publicize a list of “diesel magnet sources,” including five ports, ten airports, and 25 rail yards. In addition, CARB must issue guidelines for the magnet sources to use when quantifying their exhaust pollution. By January 1, 2008, CARB must: identify gaps and “determine if any changes or additions are necessary to meet the State’s environmental justice goals;” review its guidelines and make changes to include specific criteria for the reporting; identify control measures to reduce air pollution; and report to the Legislature by March 30, 2008.

- **California, Assembly Bill 1430, introduced on February 22, 2005 by Assemblywoman Jackie Goldberg (D-District 45). Status: Passed Assembly and Sent to Senate on January 26, 2006. Read Second Time on August 8, 2006.** The Bill requires the Secretary of the California Environmental Protection Agency (“Cal/EPA”) to convene a Working Group on Environmental Justice to assist Cal/EPA in developing an agency wide strategy for addressing programs, policies, and activities that may impede the achievement of environmental justice. It also establishes an advisory group comprised of representatives of various organizations, including small and large businesses, community organizations and others. The Working Group will recommend procedures for collecting, maintaining, analyzing, and coordinating information relating to an environmental justice strategy. Moreover, the Bill specifies that CARB’s environmental justice advisory committee review each methodology used to calculate the value of air emission reductions credits (“ERCs”). Finally, this Bill requires the Advisory Committee on Environmental Justice to review each updated methodology for use by air pollution control districts and air quality management districts to calculate the value of credits issued for ERCs.
- **Florida, House Bill 7131, introduced on March 15, 2006 by the House Committee on Environmental Regulation. Status: Approved by Governor on June 22, 2006. Chapter Number 2006-291 on June 23, 2006.** The Bill amends various provisions of the Florida Brownfield Redevelopment Act. The Bill increases the amount of credit, from 35 percent to 50 percent, that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated brownfield or dry-cleaning site. In addition, the Bill increases the percentage and amount of tax credit that a taxpayer may receive in the final year of the cleanup as an incentive to complete the cleanup. Finally, the Bill also amended Section 376.80(4), Brownfield Program Administration Process, of the Florida Statute to require “[l]ocal

governments or persons responsible for rehabilitation and redevelopment of brownfield areas [to] establish an advisory committee or use an existing advisory committee that has formally expressed its intent to address redevelopment of the specific brownfield area for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use . . . community safety, and environmental justice.”

- **Hawaii, Senate Bill 2145, introduced on January 23, 2006 by Senator Colleen Hanabusa (D-District 21). *Status: Enrolled to Governor on May 8, 2006. Senate and House Act 294 on July 10, 2006.*** The Bill will appropriate \$82,325, or so much thereof as may be necessary for Fiscal Year 2006-2007 (“FY 2006-2007”), out of the general revenues of the State for the environmental council to contract with a consultant to facilitate and coordinate the State’s environmental justice activities, which will include: (1) defining environmental justice through educational community outreach activities; (2) developing and adopting a guidance document that addresses environmental justice in all phases of the Environmental Impact Statement (“EIS”) process; (3) recommending to update the EIS process; and (4) conducting educational and community outreach activities. In addition, the Office of Environmental Quality Control shall contract with the University of Hawaii Environmental Center to conduct a comprehensive review of the State’s current EIS process. The Bill earmarked \$108,675, or so much thereof as may be necessary for FY 2006-2007, for this EIS review. The Act was scheduled to take effect on July 1, 2006.
- **Massachusetts, House Bill 4698, introduced on May 17, 2006. *Status: Signed by Governor on August 2, 2006.*** The Bill relates to expediting and streamlining the permitting process in the Commonwealth. Of particular note is Section 20 of the Bill, which provides, in part, that: “[t]he secretary of environmental affairs shall report to the house and senate clerk of the general court on January 1, 2009 and January 12, 2012 with respect to the state-wide environmental justice program adopted by the secretary of environmental affairs. The report shall address the scope and effectiveness of the existing environmental justice program in the commonwealth, and shall identify and discuss the problems and deficiencies of the program as well as its accomplishments. . . . The report shall also consider the likely effects of this act on environmental justice concerns.”
- **North Carolina, Senate Bill 353, introduced on March 2, 2005 by Senator Daniel G. Clodfelter (D-District 37). *Status: Presented to Governor on July 28, 2006.*** The Bill would, among other things, impose a moratorium on the consideration of permit applications, as well as on the issuance of permits to construct new Landfills in the State for one year

beginning on August 1, 2006. The moratorium would be subject to certain exceptions. The moratorium on permit applications and issuance of permits would allow the State to “study solid waste disposal issues . . . to protect public health and the environment.” Among the reasons listed as for why the moratorium was necessary were that “economic and other factors may cause landfills to be concentrated in minority and low-income communities in the State; and . . . minority and low-income communities may be at particularly high risk for potential threats to human health and the environment from the siting of landfills in these areas.” In addition, the Bill established a 12-member Joint Select Committee on Environmental to study various issues related to the siting of landfills in relation to low-income and minority communities.

- **Rhode Island, Senate Bill 3113, introduced on May 18, 2006 by Senator V. Susan Sosnowski (D-District 37). *Status: Signed by Governor on July 3, 2006. See also Rhode Island, House Bill 8239, introduced on June 14, 2006 by Congressman Gordon D. Fox (D-District 4). *Status: Signed by Governor on July 3, 2006.**** The Bill would amend the Industrial Property Remediation and Reuse Act (“Act”) and take effect upon passage. The Bill sets forth the Act’s policies, which include: controlling and eliminating contamination at industrial properties in a way that is fair, consistent, and compatible with the current and reasonably foreseeable future use of the property; removing environmental barriers to economic redevelopment and beneficial reuse of contaminated properties; providing business with opportunities to realistically manage their environmental liabilities; encouraging voluntary and cooperative clean-up actions to the greatest extent possible; and reasonably minimizing transaction costs to the extent feasible to facilitate appropriate reuse of contaminated properties. The Bill contains a section on “environmental equity and public participation,” which, among other things provides that the “Department of Environmental Management shall consider the effects that clean-ups would have on the populations surrounding each site and shall consider the issues of environmental equity for low income and racial minority populations. The Department of Environmental Management will develop and implement a process to ensure community involvement throughout the investigation and remediation of contaminated sites.”
- **State Regulatory Alerts.**
  - **District of Columbia, Adopted Ceremonial Resolutions, 53 D.C. Reg. 5194 (June 30, 2006).** The notice, dated June 6, 2006, sets forth Ceremonial Resolution (“Resolution”) 16-279, which posthumously recognized the life and work of Damu Smith. In addition, the Resolution declared May 5, 2006 as “Damu Smith Day” in the District of Columbia. Among other accomplishments, the Resolution, which

was known as the “Damu Smith Posthumous Recognition Resolution of 2006,” noted that Mr. Smith founded the National Black Environmental Justice Network.